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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd April 1953

S.R.O. 634.—WHEREAS the election of Shri Jagat Bahadur Singh, resident of Barkhera, Tehsil Gopadbanas, District Sidhi, as a member of the Vindhya Pradesh Legislative Assembly from the Churhat constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Udainath Singh, resident of Darhia, Tehsil Gopadbanas, District Sidhi, Vindhya Pradesh;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL VINDHYA PRADESH AT REWA

ELECTION PETITION No. 4/164 OF 1952

Shri Udainath Singh, s/o Behari Singh, r/o Darhia, Tehsil Gopadbanas, Distt. Sidhi,—*Petitioner.*

Versus

1. Shri Jagat Bahadur Singh, s/o Mahabali Singh, r/o Barkhera, Tehsil Gopadbanas Distt. Sidhi.
2. Raja Sheo Bahadur Singh, s/o Fateh Bahadur Singh, r/o Churhat, Rewa.
3. Rao Shri Krishna Pratap Singh, s/o Lal Yadvendra Singh, r/o Rampur Naikin, Tehsil Gopadbanas, Distt. Sidhi.
4. Shri Keshau Singh, s/o Abhairaj Singh, r/o Sidhi.—*Respondents.*

ORDER

1. The Petitioner in this case is an elector enrolled at No. 366 of village Darhia, in the Sidhi-Gopadbanas sub-division of the electoral roll relating to Churhat Constituency, for the Legislative Assembly of Vindhya Pradesh. At the last election, held in January, 1952, the Respondents, all of whom were candidates at the election, polled the following number of votes;—

Respondent No. 1 (Jagat Bahadur Singh)	...	6,137
Respondent No. 2 (Sheo Bahadur Singh)	...	4,317
Respondent No. 3 (Krishna Pratap Singh)	...	3,888
Respondent No. 4 (Keshau Singh)	...	1,196

2. Respondent No. 1 was, therefore, declared elected and the Notification regarding such election was published in the *Gazette of India*, dated 15th February, 1952.

3. The Petitioner, who is an elector in the constituency, as stated above, and who worked, during the election, as a polling agent of Respondent No. 3 (Shri Krishna Pratap Singh) has filed this petition, asking for a declaration that the election in which Respondent No. 1 was returned as the successful candidate, is wholly void, because Respondent. No. 2 (Raja Sheo Bahadur Singh) was disqualified for being a candidate for the Legislative Assembly of Vindhya Pradesh, on the ground that he had been convicted on 10th March, 1951, by order of Judicial Commissioner, Vindhya Pradesh, at Rewa, under Section 161 and 120-B I.P.C., and sentenced to three years R.I. and a fine of Rs. 2,000/-. The Petitioner, therefore, contends that the nomination paper of Respondent No. 2 was wrongly accepted by the Returning Officer, and such wrongful acceptance has materially affected the result of the election. His contention is that the votes polled for Respondent No. 1 would have gone to Respondent No. 3 and he would have thus secured the highest number of votes.

4. The petition has been contested by Shri Jagat Bahadur Singh, Respondent No. 1, who pleads that the nomination paper of Respondent No. 2 was properly accepted and the result of the election has not been affected at all by such acceptance. He also pleads that Respondent No. 2, having filed an appeal against the judgment of the Judicial Commissioner before the Supreme Court of India, the whole case is *sub judice* and hence no disqualification was incurred by such Respondent. He has raised another plea regarding the non-joinder of certain "duly nominated candidates", namely, Abhairaj Singh, Ram Pratap Singh and others, who had withdrawn their candidature, but who according to this Respondent, were necessary parties to this petition.

5. Respondent Nos. 2 and 3 put in their written statements but did not subsequently appear to contest the petition.

6. In the written statement of Respondent No. 2 he denied his disqualification on the ground that his appeal is pending before the Supreme Court of India.

7. Respondent No. 3 admitted all the contentions raised in the petition.

8. Arising out of the pleas of parties, the following *Issues* were framed:—

I. Was Respondent No. 2 Raja Sheo Bahadur Singh disqualified from being a candidate for the State Legislative Assembly of Vindhya Pradesh, on the ground that he was convicted on 10th March, 1951 under section 161 and 120-B I.P.C. and sentenced to 3 years R.I. and a fine of Rs. 2,000/-?

II. Has the result of the election been materially affected by the acceptance of the nomination paper of Respondent No. 2?

III. If so what is the effect?

IV(a) Were Shri Abhairaj Singh, Ram Pratap Singh and others who were nominated and who are alleged to have withdrawn, necessary parties to this petition?

(b) If so, what is the effect?

Issue No. IV.

9. This issue was disposed of by our order dated 26th November, 1952 (Annexure A). It was found by us in this order, that the non-joinder of such candidates who had withdrawn their candidature, is not fatal to the maintenance of this petition.

Issue No. I.

10. This issue was heard and decided by our order dated 8th January, 1953 (Annexure B). By this order we found that Respondent No. 2 was disqualified for being nominated as a candidate for election to the V. P. Legislative Assembly and therefore his nomination paper was improperly accepted.

Issues Nos. II and III.

11. We have found above that Respondent No. 2 (Raja Sheo Bahadur Singh) was disqualified for being nominated as a candidate for election to the Legislative Assembly of Vindhya Pradesh, and hence his nomination paper was improperly accepted.

12. We have now to consider, under Issues Nos. II and III whether the result of the election has been materially affected by such wrongful acceptance of the nomination paper of Respondent No. 2.

13. As will be noticed, these issues are based on the provisions of law contained in Section 100 (1)(c) of the Representation of the People Act, 1951. This sub-section reads as follows:—

If the Tribunal is of opinion—

(c) "that the result of the election has been materially affected by the improper acceptance or rejection of a nomination.....

The Tribunal shall declare the election to be wholly void".

14. In this petition we are not concerned with the effect of an improper rejection of a nomination paper at all or with the legal presumption or onus of proof connected therewith. The main question before us is whether the result of this election has been materially affected by the improper *acceptance* of Respondent No. 2's nomination paper.

15. The decision of these issues would depend on the expressions "the result" and "materially affected" used in section 100(1) (c) of the Act. We shall first determine the meaning and signification of the words "materially affected" and then consider the expression "result". The ordinary meaning of these expressions does not carry us far enough for these words have some special or technical meaning in the context of this section. We, therefore, proceed to consider the interpretation put on them by Contemporaneous authorities in the trial of election petitions. These words in the R.P. Act, 1951 remain the same as in the old enactments. The presumption, therefore, is that the terms repeated in subsequent cognate enactment should be understood in the same sense (Maxwell Interpretation of Statutes, page 314, 9th edition).

16. In Bellarey M.R. case No. 47 reported in Doabia's Indian Election Cases, Vol. I, page 169, the words "materially affected" were held to have meant that the majority of the returned candidates would have materially reduced and the "result of the election" was interpreted to have meant "that the names of the candidates in the order of the poll with the number of votes polled for each". This interpretation is too broad and seems to go beyond the terms of section 100 which we are bound to interpret according to their plain and clear meaning. In fact, the perusal of the order of the learned Commissioners in this case indicate that, firstly, the points for determination before the learned Commissioners did not call for the statement of this general proposition, and secondly the proposition itself was based on an earlier authority dissented from in various other cases. We, therefore, respectfully disagree and are not prepared to accept this proposition which goes too far. The actual decision in this case was that the improper acceptance of some votes was held not to have materially affected the result of the election and the nomination paper was held to be valid despite some technical short-comings described as "puriilities" in the order.

17. In Patna West N.M.R. case reported in Hammonds Election Cases at page 533, it was held that the result of the election cannot be said to be materially affected unless the irregularities actually turned the scale in favour of the returned candidate. In England it was once held on the authority of Hackney case that the result of the election should be held to be materially affected for the same reasons as have been referred to in the Bellarey M.R. case already adverted to. But later this view was dissented from.

18. In Bengal Legislative Council Case (R. B. S. N. Sinha *versus* D. A. Roi and others reported at page 368 of Doabia's Indian Election Cases (1935—1950 Vol. II), the view referred to in Patna West Case finds full support. At pages 378 and 379 of this report the English law on the subject has been amply referred to and a difference between the Ballot Act, 1872 and Indian Enactments has been clearly pointed out. This difference seems to have been over-looked in some earlier Indian decisions regarding the onus of proof in such cases. We are in respectful agreement that the opinion expressed in this case regarding the interpretation of the expressions "result" of election and "materially affected". as also with the observations on the subject in Hoshiarpur West General Constituency Case 1946 reported at page 945 of Sen & Poddar's Indian Election Cases, 1935—1951.

19. We are, therefore, of the opinion that the petitioner must prove in this case that the Respondent No. 1 would not have succeeded in the election if he (Raja Sheo Bahadur Singh) the disqualified candidate, Respondent No. 2, was not in the field. In other words, if this is not proved by legal materials on the record and due consideration of relevant circumstances, we would be unable to hold that the result of the election was materially affected in this case on the ground of the improper acceptance of the nomination paper of Respondent No. 2. We shall

now proceed to consider the evidence adduced by the parties in this case. The learned counsel for the petitioner candidly agreed that the oral evidence of both parties was based on surmise and conjecture and therefore could not afford much assistance in the decision of this issue. We are not going to base our conclusion in this candid submission but the submission seems to have considerable force. It may be that this opinion was urged without full consideration of the question of the onus of proof in such cases. For, if the evidence for both sides is really useless and the petitioner cannot sustain the onus in other legal ways, who loses the case? It is inevitable in such a case that the result of the election will be deemed not to have been materially affected.

20. We may note that the evidence of speculative nature cannot be helpful in the decision of this case. Much of the evidence in this case, however, is of this nature. We need hardly add that an Election Tribunal can arrive at its conclusions and form the judicial opinion upon legal proof of the matters in issue. Conjecture cannot be a substitute for legal proof. The provisions of the Indian Evidence Act apply in all respects to the trial of an election petition subject to the provisions of the R. P. Act, 1951. The standard of proof cannot be slackened in favour of the party because the matters required to be proved happen to be very difficult to be proved. We shall certainly take in account all surrounding circumstances and form our opinion on legal evidence without being oblivious of the imponderables implicit in such matters, but respectfully we have no hesitation in saying that we are not prepared to go so far as the Bhagalpur Tribunal suggests in the order published in the Gazette of India (extraordinary) dated the 2nd February, 1953. According to this decision, because it is impossible for a petitioner to discharge the onus placed upon him, it should be deemed to have been discharged, for the law cannot expect the performance of the impossible. Firstly it cannot be postulated that such task was impossible. Secondly how-so-ever difficult it may be a matter has to be proved legally in a Court of Law by such direct or circumstantial evidence as may be available.

21. Apart from the speculative or conjectural nature of evidence of the parties in this case, most of the witnesses examined by the petitioner are partisan witnesses. We are rather in respectful agreement with the opinion expressed in Maldah North M. R. Constituency Case 1937 reported in Sen and Poddar's Indian Election Cases at page 542 that "clear evidence shall be forthcoming to show that the result of the election has been materially affected.....".

22. We notice that the Petitioner was not a candidate at the election. He worked as a polling agent of Respondent No. 3 and his object in filing this petition is, on the face of it, to help the cause of Respondent No. 3, because he says in para. 8 of the petition that "the votes polled by Respondent No. 2 would have gone to Respondent No. 3.....". The total number of votes for Respondent Nos. 2 and 3 exceed the number of votes polled for Respondent No. 1.

23. Another point that is worthy of consideration is that Respondent No. 2 (Raja Sheo Bahadur Singh) who is an ex-Minister of the State and who was convicted by the court of Judicial Commissioner, Rewa on 10th March, 1951, under Section 161 and 120-B I.P.C. and sentenced to R.I. for three years and a fine of Rs. 2,000/- and whose appeal is pending in the Supreme Court of India, is now supporting the petitioner's case, but in his statement as P.W. 21 he seems to blow hot and cold in the same breath. There is no doubt that he is a leading Illakadar of the locality and it appears that he got some support during the election on the basis of such influence in the Illaka. He stood as a Congress condidate at the election, but later his candidature was repudiated by the President of the Congress Pandit Jawaharlal Nehru. Thereafter he became an independent candidate, though retaining the Congress symbol already allotted. There were two other candidates, his brother Ram Pratap Singh and Sheomangal Singh. The Respondent No. 2 states that the two last mentioned candidates were dummy candidates and that Ram Pratap Singh withdrew in his favour. Raja Sheo Bahadur Singh was the President of the Sidhi District Congress Committee. In one part of his statement he says that if he had not stood as a candidate, he would have supported his brother Ram Pratap Singh because of his being a Congress candidate. He adds that he could have never supported a Jan Sangh candidate because the party is a communalist party, nor he could have supported the Socialists, but in this case he seems to be supporting the petitioner who has evidently been put up by Respondent No. 3, who is a Jan Sangh candidate.

24. Respondent No. 2 has stated that *if he had not stood as a candidate, his votes would have gone to Respondent No.* 3, although we know that Respondent No. 3 stood as a Jan Sangh candidate. It is an admitted fact on the record that there was an old standing enmity between Raja Sheo Bahadur Singh and Shri

Krishna Pratap Singh (Respondents Nos. 2 and 3 respectively). This enmity is admitted by Respondent No. 3 who appeared as P.W. 22. He states that the relations became cordial four or five generations ago, but *during the election the old enmity revived between him and Respondent No. 2 as well as between their cultivators.* This would account for the alignment of some of the witnesses of both parties. Certain workers and agents of Respondent No. 2 have appeared as witnesses for Respondent No. 1 because of the harassment alleged to have been practised by Respondent No. 3 on his tenants, whereas Respondent No. 1 seems to have secured a large majority of votes on the basis of his services to such harassed tenants. It is also apparent from the petition that Respondent No. 1 was able to defeat by large majority, both the Illakadars and Maliks *viz.* Raja Sheo Bahadur Singh and Shri Krishna Pratap Singh (Respondents No. 2 and 3 respectively). It may, therefore, be safely inferred that in the absence of Respondent No. 2, his votes would have not gone on *en-bloc* to Respondent No. 3, but would certainly have been divided among the other candidates. The usual manner of distributing such votes is to act on the percentage of votes obtained by such candidates. We find that Respondent No. 1 got 39 per cent. of total votes polled, whereas the percentage in the cases of other candidates is as follows:—

Respondent No. 2	...	28 per cent.
Respondent No. 3	...	25 per cent.
Respondent No. 4	...	8 per cent.

If we distribute the votes of Respondent No. 2 according to this percentage, the result would be as follows:—

Respondent No. 1	...	7,821
Respondent No. 3	...	4,867
Respondent No. 4	...	1,451

Thus we find that Respondent No. 1's majority would rather be increased and the result would not be materially affected.

25. There is mention in the statement of Raja Sheo Bahadur Singh that, if he had not stood as a candidate, his brother Shri Ram Pratap Singh would have contested the election as a congress candidate. On the basis of such statement, it would be very improper to base our conclusion on mere conjectures and to surmise what would be the chances of Ram Pratap Singh as a Congress Candidate especially we may well presume that his influence was certainly less than that of his elder brother (Respondent No. 2). To say that he would have been able to defeat Respondent. No. 1, would be a bare conjecture, without justifying reasons.

26. It appears from the evidence on record that Respondent No. 1 is also a co-sharer '*Malik*' in the village and, as stated by P.W. 1, he is a closer agnate of Respondent No. 2 than Respondent No. 3. We have mentioned this point to show that there seems to be no reason why, in the absence of Respondent. No. 2, his votes, as *Malik* and *Illakadar*, most necessarily have all gone to Respondent No. 3. On the other hand P.W. 23 Harbhushan has admitted that the electors of the area was mostly in favour of the Socialist Party. They supported Respondent No. 2 who was a Congress candidate and *Illakadar*. In his absence they would have supported Respondent No. 1. He is stating from his experience obtained during the canvassing of about 5 or 6 hundred voters.

27. Another point worth mentioning is that, in the area in which this constituency was situated the trend of the electorate appears to have been towards Socialist candidates who have been able to capture 6 out of 7 seats in the Sidhi District, and the 7th seat has gone either to a Ram Rajya Parishad or Jan Sangh candidate (*See* statement of Respondent No. 1 as P.W. 29.) This would account for the fact that, in this constituency, Respondent No. 1 who is a Socialist candidate, was able to defeat by a large majority, both the *Illakadars* and *Maliks* of Churhat and Rampur Naikin. It stands to reason that in the presence of one of the *Illakadars*, the position of Respondent No. 1 certainly would not have been worsened.

28. It will be noticed that we have referred above to those portions of evidence which cannot be characterised as conjectural or speculative. We find from the facts and circumstances appearing in the evidence of both the parties that nothing has been brought out on record which enables us to find it 'proved' that the result of the election has been materially affected by the improper acceptance of the nomination paper Respondent No. 2. In other words, leaving aside the conjectural

evidence, there is no legal proof that such material effect may be held as to be proved on the facts on record, or that its existence may be considered so probable that a prudent man would act on the supposition that the result of the election has been materially affected in this case by the improper acceptance of the nomination paper of Respdt. No. 2.

30. We need not go into the oral evidence in detail having regard to the fact that most of it is of speculative nature. We have merely deduced certain facts and circumstances mentioned above from the evidence of both the parties, which we consider to have a meterial bearing on the matter before us.

31. We, therefore, find that the petitioner has failed to discharge the onus placed on him of proving that the result of the election has been materially affected by the improper acceptance of the nomination paper of Respdt. No. 2.

32. Lastly it has been argued before us by the learned counsel of Respdt. No. 1, and this is the theory of "votes throws away". His contention is that all the votes cast for Respdt. No. 2 who was a disqualified candidate, must be considered to have been thrown away. We do not consider that this principle of law can be applied to the facts of this case for the following reasons:—

There is no satisfactory evidence to show that the electorate, who are very backward in this area, had wide notice of the fact that Respdt. No. 2 who was a leading and influential man of the Illaka had been convicted and sentenced to 3 years R.I. and fined. Even the knowledge of a conviction alone would not be proof of disqualification, as the law requires that such conviction must be not less than two years (see section 7 of the R. P. Act, 1951). Man Bhadur Singh (P.W. 14) has deposed that he had knowledge of the conviction and sentence, but there is no other satisfactory evidence to show that all or majority of the electors had notice of this conviction or that a wide publicity was given to it. We can well imagine that the agents of the rival candidates must have made capital out of this conviction of Respdt. No. 2, but in the absence of any direct proof to that effect, such supposition cannot be the basis of our findings.

According to the English Rulings quoted by the learned counsel for Respdt. No. 1, the necessary ingredients of the principle of the "votes being thrown away" are *wide publicity* or *notoriety*. For instance in Scheduled's Parliamentary Election at pages 316 to 318 it is stated that votes given for a disqualified candidate *after notice*, are thrown away. Similarly in Roger's on Election Vol. II at page 82, it is stated that an elector who, with actual knowledge, though without express notice of the fact of disqualification, votes for a disqualified candidate, throws away his votes. Reference has been made to the judgment of Lord Denman C. J. in L. J. Q. B. para. 201 where it is given that "where the disqualification be of a sort of which notice is to be presumed, none need expressly be given....."

33. In the present case we find that there is an absence of proof of publicity or of knowledge of disqualification and the period of sentence, without which no question of disqualification would arise. The case of Lady Sandhurst, recorded in Queen's Bench Division (1889) Vol. 23, page 79, is easily distinguishable, because the disqualification in that case was that the person elected was a woman, instead of a man, and this matter was necessarily known to every one.

34. We may also mention that this plea of votes "thrown away" was never raised in the pleadings. On the other hand, in the written statement of Respondent No. 1, the fact of this disqualification was denied (see para. 6).

35. For these reasons we find that the contention of "votes thrown away" now raised by the learned counsel for Respondent No. 1, cannot be sustained. Really, apart from the question of publicity or notoriety this doctrine does not seem to have a tangible bearing on the issue before us. This principle may be applicable to cases where a candidate, other than the returned candidate, may be declared elected under section 101 of the R.P. Act, 1951. No authority has been cited to show that this theory has been applied for the determination of the question of "material effect" on the result of the election.

36. The result of our findings above is that the petition must fail and we accordingly dismiss it.

37. The improper acceptance of the nomination paper of Respondent No. 2 by the Returning Officer was largely responsible for these proceedings, and the Respondent No. 1 tried to sustain this improper acceptance in his pleadings. In the circumstances of the case, we order that the parties shall bear their own costs.

38. Shri Gur Prasanna Singh and Shri Debi Prasad, Pleaders, appeared for the Petitioner. Shri Satish Chandra, Advocate, assisted by Shri Sriniwas Tewari. Shri Jagdish Chandra Joshi, and Shri Sheo Kumar Sharma appeared for Respondent No. 1.

ANNOUNCED.

(Sd.) E. MUKERJI *Chairman.*

(Sd.) G. L. SRIVASTAVA, *Member.*

(Sd.) U. S. PRASAD, *Member.*

The 26th March, 1953.

ANNEXURE A

Findings

Out of the election petitions pending before this Tribunal there are 11 such petitions in which written pleas have been put in by parties and in which among other matters a plea of non-joinder of parties has been raised, which calls for decision. In order to explain the nature of the pleas that have been raised in these petitions, we give below the number of such petitions and the issues framed on the question of non-joinder.

1. *File No.* 1/74.—No. I(a). Was Shri Sheo Kumar Sharma a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

(NOTE.—It may be noted that Shri Sheo Kumar Sharma mentioned in this issue was a candidate who had withdrawn his candidature within the prescribed period.)

2. *File No.* 2/140.— No. XVI. Were Shri Pancham Lal Jain, Shri Vaidya Jamuna Prasad and Shri Shambhu Nath Shukla necessary parties to this election petition and what is the effect of their non-joinder?

(NOTE.—The persons mentioned in this issue are those who had been nominated but had withdrawn their candidature within the prescribed period.)

3. *File No.* 3/141.—I. (a) Is the constitution of the array of the respondents defective by reason of non-joinder of Shri Ravendra Singh and Shri Madsudan Prasad?

(b) Is such defect, if any, fatal to the maintenance of the petition?

(NOTE.—Persons mentioned in this issue are stated to have withdrawn their candidature within the prescribed period.)

4. *File No.* 4/164.—IV. (a) Were Shri Abhairaj Singh, Shri Ram Pratap Singh and others who were nominated and who are alleged to have withdrawn, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

5. *File No.* 9/237.—I (a) Whether the candidates who had been nominated and who had withdrawn their candidature, were necessary parties to this petition?

(b) If so, what is the effect of his non-joinder?

6. *File No.* 10/238.—I (a) Was Shri Indra Bahadur Singh who was a nominated candidate and who had withdrawn his candidature, a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

7. *File No.* 11/239.—I. (a) Were the candidates, who had been originally nominated but who had withdrawn their candidature under Section 37 of the Representation of the People Act, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

8. *File No.* 12/249.—I. (a) Were Shri Somchand Jain and Shri Chhotey Lal necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(NOTE.—It is to be noted that both the persons mentioned in this issue, namely Shri Somchand Jain and Shri Chhotey Lal, were the candidates whose nominations had been rejected.)

9. *File No.* 13/260.—XVI. II. Was Shri Shankar Prasad a necessary party to this petition and what is the effect of his non-joinder?

(NOTE.—It may be noted that Shri Shankar Prasad was a candidate who had been nominated but who had withdrawn his candidature within the prescribed period.)

10. *File No.* 14/304.— I. (a) Were Shri Dan Bahadur Singh, Shri Saraswati Prasad and Shri Govind Singh necessary parties to this petition?

(b) Is their non-joinder fatal to the petition?

(NOTE.—It may be noted that Shri Dan Bahadur Singh and Shri Govind Singh were candidates whose nomination papers had been rejected and Shri Saraswati Prasad is stated to have withdrawn his candidature.)

11. *File No.* 15/307.—I. (a) Were Shri Puran Chand and Shri Polwa necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(NOTE.—It may be noted that both the persons mentioned in this issue were candidates whose nomination papers were rejected.)

It is apparent, from the above list, that in two of the above petitions, namely No. 12/249 and 15/307, and partly in No. 14/304, the question arises whether a candidate whose nomination paper was rejected at the time of scrutiny is a necessary party to these election petitions, under Section 82 of the Representation of the People Act, 51, and what is the effect of his non-joinder.

In the other 8 cases and in the case of one person in file No. 14/304, the question is whether candidates whose nomination papers had been accepted at the time of scrutiny but who had later withdrawn their candidature within the prescribed time, were necessary parties to these petitions, under the provision of section 82 of the Representation of the People Act, 51 and if so, what is the effect of their non-joinder.

These preliminary issues have been argued at length before us by Mr. A. P. Pandey, Advocate for the respondents who had raised the plea of non-joinder, and by Mr. R. N. Basu on behalf of the petitioners, in the different cases. They have been assisted by other lawyers representing both the parties in all the petitions. We proceed to discuss the first question enunciated above namely, whether a candidate whose nomination paper had been rejected, is a necessary party within the meaning of Section 82 of the Representation of the People Act, 1951.

On this point we have heard the rather ingenuous arguments advanced by Mr. A. P. Pandey. He has urged before us that a candidate whose nomination paper has been put in at the proper time and place, and which bears the signatures of a proposer and a seconder, and is accompanied by a declaration of appointment of a election agent and also by a receipt of deposit of security, has become duly nominated thereby. In case the candidate is a member of Scheduled Tribe, a further declaration has to be attached with the nomination paper. The learned counsel has argued that, having done these things, the candidate *'duly nominates himself'* without the intervention of any Returning Officer. In other words, this contention amounts to this that, by the unilateral act of the candidate in putting in his nomination paper, along with certain declarations and receipt, gives him the status of a "duly nominated candidate". We are unable to see the soundness of this proposition as advanced by Mr. A. P. Pandey. According to the Law Lexicon of British India by B. R. Aiyar (Edition of 1904) the significance of the word *'duly'* has been given as some thing done 'regularly' fitly, in a suitable or becoming to law or some rule or Law. Thus it is clear from these interpretations that in order to become a *duly nominated* candidate, the nomination paper must stand the test of scrutiny provided in Section 36 of the Representation of the People Act, 51. This section provides that on a date fixed for the purpose, the Returning Officer has to examine the qualifications of the candidate and of his proposer and seconder, also to examine the signatures in order to detect fraud if any and to judge whether the provisions of Section 33 and 34 have been complied with. Unless and until the Returning Officer finds the nomination paper in order and according to the requirements of law, it will be idle to say that the candidate has become duly nominated.

The learned counsel has referred to Section 100 of the Representation of the People Act Clause C and has urged a wrongful rejection of a nomination paper is sufficient to avoid the whole election. This contention has, however, no bearing on the question now before us, because it is a matter which would be gone into if any case, if pleaded by either party, even in the absence of the candidate whose nomination paper had been rejected.

It may be mentioned here that a candidate whose nomination paper had been rejected, could if he so desired either come in as a petitioner or as a respondent under the provision of Section 90, sub-section 1 of the Representation of the People Act, and he could also file recriminations under Section 97 of the said Act. Hence the absence of such a person from the original list of respondents cannot be said to be prejudicial to the proper decision of the case, over and above the fact that Section 82 does not make it necessary to implead him.

The learned counsel for the respondents has not been able to cite any previous decision in support of his proposition namely that a candidate whose nomination paper was rejected is a necessary party under Section 82 of the Representation of the People Act.

The learned counsel for the petitioners has argued that sections 33 to 36 of the Representation of the People Act lay down the necessary requisites which would render a person a "duly nominated candidates". We agree that Sections 33 and 34 contain the necessary requirements which have to be fulfilled by a candidate when filing a nomination paper, and Section 36 lays down the provisions for testing the steps in the process of nomination comprise a series of acts which must be fulfilled due compliance with the requirements of law. We consider that these different before a person can claim to be a "duly nominated candidate."

For these reasons we are of the opinion that a candidate whose nomination paper has been rejected at the time of scrutiny cannot be called a duly nominated candidate and hence he is not a necessary party within the meaning of Section 82 of the Representation of the People Act. While holding this view, we are not oblivious of the provisions of section 100 (c) which provides that an election may be declared to be wholly void, if the result of the election has been materially affected by the improper acceptance or rejection of any nomination. It was open to the parties to an election petition to raise such plea and seek a decision thereon. It was open to a rejected candidate as well to come forward and be joined as a respondent in compliance with Section 90(1) within the prescribed period.

II. We have found above that a candidate cannot be considered to have been duly nominated before his nomination papers are scrutinised by the Returning Officer under section 36 of Representation of the People Act and accepted by him. The next question is whether, after such scrutiny, the candidate whose nomination paper has been found to be in order becomes a person who must be made a party under the provision of Section 82 of the Representation of the People Act, which lays down that candidates who were "duly nominated at the Election" shall be joined as Respondents. In the cases now under consideration both parties admit in this connection that the candidates whose non-joinder is in dispute, were those whose nomination papers had been accepted at the time of scrutiny, but who later withdrew under Section 37 R. P. Act.

We wish to remark at the outset that we must presume the framers of law to have provided for results which are reasonable and effective and not such as would lead to undesirable or harmful consequences. Proceeding on this principle we must assume that Section 82 R.P. Act contemplates the impleading of living and existing persons and not of persons whose existence has been terminated by Act of God or by operation of law.

In the case under consideration certain candidates had of their own choice, availed themselves of the opportunity provided in Section 37 R.P. Act and *"terminated their candidature"*, and had this fact published in an official list (U/S 38 R.P. Act) for the information of whole Electorate. By this act of the candidates, which has been officially recognised and accepted, they had ceased to exist in the election field. They could not even withdraw their notice of withdrawal once given within the prescribed period. *By operation of Election law therefore such candidates had ceased to exist even as candidates, what to speak of "duly nominated candidates".*

We cannot conceive of any interpretation of Section 82 R.P. Act which would compel a petitioner to bring back to life those candidates whose existence as such ceased after their withdrawal. Such candidates had publicly left the arena for good, and to drag them again *by force* into the later stages of the Election conflict would be, in our view, meaningless. Of course such candidates on reverting to the position of voters after their withdrawal, had every right as voters, to come in either as petitioners or, to apply to be joined as Respondents within the period prescribed by Section 90 sub-section (1) R. P. Act or to file recrimination U/S 97 R.P. Act. Not having chosen to do so, we fail to see what interests of justice would be served by impleading them at the instance of the contesting respondents, rather this step would impede justice by helping those respondents who may desire to prolong the cases unnecessarily. For this reason we are of the opinion that such candidates, who had withdrawn U/S 37 R.P. Act are not necessary parties to these petitions within meaning of Section 82 R.P. Act.

As regards the cases cited before us we may remark generally that the argument in such cases decided under the Election Rule of 1920 are of no help to us, because under those laws no time limit was prescribed for withdrawal, and when therefore the act of withdrawal was not considered such a solemn and serious act

of self effacement as under the present law. We notice the trend of the change in the law by referring to the Shahabad case decided recently (1947) when it was found that non-joinder of a candidate who had withdrawn is not fatal (See Indian Election Cases Sen and Poddar pages 750 and 751). See also Ludhiana Mohammadan Rural Constituency Case (Sen and Poddar page 970).

Our view also finds support in the order passed in a recent case by the Election Tribunal at Allahabad in Election Petition 316 of 1952. in which it was found that a candidate who had withdrawn his candidature, is "no larger actually interested in the election" and is not a necessary party.

Mr. Pandey has also cited a Baroda case No. 19 of 1952, published in the *Gazette of India Extraordinary*, dated 11th August 1952. In that case the petitioner was a candidate whose nomination paper had been rejected. He alleged that the rejection was wrongful and improper and that the result of the election was materially affected thereby. In that case there was no issue about non-joinder of candidates who might have withdrawn their candidature. So any remarks made by the Tribunal on this question were in the nature of obiter.

II. In this view of the matter we hold that the candidates who withdrew their candidature under Section 37 of the Representation of the People Act, 1951 are not necessary parties within the meaning of Section 82 of the said Act.

ANNOUNCED

The 26th March, 1953.

(Sd.) E. MUKERJI, *Chairman*.
(Sd.) G. L. SRIVASTAVA, *Member*.
(Sd.) U. S. PRASAD, *Member*.

Opinion Recorded by Shri G. L. Shrivastava re: Non-joinder.

1. Having unanimously recorded by the finding on the issue of non-joinder of a candidate whose nomination was rejected by the Returning Officer under Section 36 of the Representation of People Act 1951. The Tribunal has proceeded to consider and decide the issue of non-joinder of candidates whose nomination was accepted but who duly withdrew their candidature within the time prescribed by Section 37 of the Act and who, therefore, were not included in the list of valid nominations under Section 38 of the said Act. This issue is common in the cases referred to in the findings already recorded and the finding hereinafter recorded would be the finding on the indentical issue of law in those cases and would form part of the file of those cases.

2. This common issue of law may be stated thus. Are the candidates whose nomination was accepted under Section 37 of the Representation of People Act 1952 but who withdrew their candidature under section 38 of this Act a necessary party to the Election Petitions in question within the meaning of Section 82 of the Act.

3. The decision of this issue depends on the determination of the meaning and signification of the expression "duly nominated" used in Section 82 of the Representation of the People Act 1951 hereafter referred to as the Act which provides as follows:—

> "*Parties to the petition.*—A petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated".

4. The learned counsel for both sides argued this point at length with ability and vigour. This expressing "duly nominated" has not been defined in the Act. I have tried to interpret these words after a careful and integrated study and examination of the various provisions of the Act where the words occur in the light of the accepted canons of interpretation. With the utmost respect for my learned colleagues I am constrained to say that I have not been able to agree with the construction put by them on this expression used in section 82 of the Act. I therefore hold that a candidate whose nomination was accepted under section 37 but who withdrew his candidature under section 38 should be regarded as "duly nominated" within the meaning of the Section 82 of the Act. The reasons for this opinion have been set out below.

5. "In the absence of any judicial guidance or authority dictionaries can be consulted". (Maxwell: the interpretation of statues 9th edition page 35 where the above passage has been reproduced from Merr V. Kennedy (1942)/K.B. 409, 413). I confess that dictionaries which were available have not given me much guidance in construing the expression duly nominated used in the particular context of the Act.

6. Before calling to my aid the method of viewing this expression in the historical setting i.e. in the light of its use in previous legislations and another method of ascertaining its interpretation in *Pari materia* statutes I would do well to examine all the parts of this Act where this expression is used for appreciating its true meaning. In 'The interpretation of statutes' (5th Edition) Maxwell remarks at page 30 on the authority of Lord Esler M. R. and Fry. L. J. in the case Lancashire and Yorks Ry. Co. V. Knowles 20 Q.B.D. 391 that "such a survey is often indispensable even when the words are the plainest, for the true meaning of any passage is that which (being permissible) best harmonises with the subject and with every other passage of the statute". In section 33 of the Act words "duly nominated" have been used in sub-section 3 and in the second and third provisos to this sub-section in connection with some declarations and certificate.

7. According to sub-section (3) which follows the requirement of the filling of a duly completed nomination paper as prescribed in sub-section (1) "no candidate shall be deemed to be duly nominated" unless a declaration of appointment of an election agent is delivered along with the nomination paper. So also "no candidate shall be deemed to be duly nominated" unless the formalities prescribed in the said two provisions are complied with.

8. The relevant part of section 34(1) of the Act stands thus "A candidate shall not be deemed to be duly nominated unless he deposits or causes to be deposited in the case of an election to Parliament (other than a primary election) a sum of five hundred Rupees.....XX".

9. Then follow sections 35 and 36, relating to the scrutiny of nominations. Under section 36 (2) the Returning Officer has to decide all objections and may refuse any nomination on any of the five grounds mentioned in it. Again according to sub-section (3) of this section the nomination of a candidate cannot be refused on the ground of irregularity in respect of a nomination paper if "the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed".

10. Next section 37 refers to the withdrawal of candidature within the prescribed time by means of a duly completed notice in writing. After some formalities the Returning Officer has to publish a list of valid nominations under section 38 in accordance with Rule I and II of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. Section 39 refers to nominations for the Council of State and Legislative Councils and the aforesaid provisions have been made applicable to these nominations. Then the Chapter I (Nominations of Candidates) of Part V ends.

11. It may be said that the method of defining the expression by negative propositions is perceptible in sections 33 and 34 of the Act. It seems to be abundantly clear that a candidate should be deemed to be duly nominated if he satisfies the requirements of law and passes the test of scrutiny.

12. Ordinarily, this class of duly nominated candidates is narrowed down to validly nominated candidates after the withdrawal of candidatures under section 37 and the publication of the list of valid nominations under section 38 of the Act. The crux of the question is whether the words "duly nominated" used in section 82 of the Act include this larger class or is to be deemed to be confined to the smaller class of valid nominations after the withdrawal. In my opinion these two classes have distinctive status and legal character under the Act for the purposes of election and proceedings connected with it. They have been used in the statute in a clear and unambiguous manner and in some places in juxtaposition which leaves no doubt about their distinct meaning and signification.

13. Again, in Chapter II section 46 of the Act the following passage occurs in the beginning of the section: "A candidate who has been duly nominated under this Act and who has not withdrawn his candidature in the manner and within the time specified in sub-section 3 .....". Here due nomination under the Act has been recognised and the Act of withdrawal is not contemplated as extinguishing the status acquired already as a duly nominated candidate.

14. The Central Government has framed the rules for carrying out the purposes of the Act under section 169 thereof. These rules are described as "the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951". The question is whether any part of these rules can be used in construing the expression in question. According to Maxwell general rules and forms made under the authority of an Act may be referred to for the purpose of assisting in the interpretation of the Act (page 39 of the Edition of the peasise herein before adverted to). In Rule No. 2 clause (f) stands as follows: "Validly nominated

candidate" means a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) of section 39, as the case may be. This definition confirms the view expressed above.

15. I am not prepared to think that if the framers of the Act intended that only validly nominated candidates, that is, duly nominated candidates who had not withdrawn their candidature, should be impleaded as respondents, they would not have used the words as used in section 82 of the Act. The language of this section would have been different if this was the object and intention. As it is, it admits of no doubt. The language is plain and such language best declares without more, the intention of the lawgiver and is decisive of it. The rule of construction is "to intend the legislature to have meant what they have actually expressed". Maxwell goes further and says "It matters not, in such a case, what the consequences may be". Undoubtedly if two meanings are possible, and one leads to absurdity, inconsistency or injustice, the other may be preferred. But if two meanings are not possible, the task of interpretation does not arise. In this connection it may be safely remarked that in construing the words "duly nominated" used in section 82 of the Act as I have done no question of absurdity or injustice arises. The argument based on absurdity or injustice has been described as a "Snare" unless absurdity or injustice is extremely gross and palpable. In this matter there is no absurdity or injustice involved in this interpretation at all. This point will be elucidated further hereafter.

16. The legislation repealed by section 171 of the Act *viz.* the Indian Election Officers and Inquiries Act 1920 and other laws relating to this subject may now be looked at for the purpose of ascertaining the meaning of the expression in question. By other laws is meant the Order in Council known as the Government of India (Provincial Elections) Corrupt Practices and Election Petition Order 1936 dated 3rd July 1936 and the Acts of Provincial Legislatures and Rules framed to regulate the form of Election Petitions and the persons who are to be made parties thereto and other matters of procedure under para. 6 of Part III of this Order. By the authority of this para, the provincial Governments could authorise the Governor to exercise his individual judgment to dismiss petitions for non-compliance with prescribed requirements. The provinces framed their own Rules which indicate that uniformity was lacking. To illustrate this point the case of Shahabad Mohammadan Rural Constituency 1946 (Manjoor Husain *vs.* Gholam Mohiuddin) reported at page 746 of Indian Election Cases by Sen and Poddar may be referred to. IIt was held in this case that non-joinder of nominated candidate who had withdrawn from contest was not fatal to the claim for seat and the case of Banares-*Cum*-Mirzapur cities was distinguished on the ground that the law in V.P. and Bihar differed.

17. In Karnal South General Constituency case (Pt. Mangal Ram *V.* Chaudhari Anant Ram) reported at page 438 of the same book, it was held that where the petitioner claimed the seat for himself it was incumbent upon him to implead all other candidates who were nominated at the election irrespective of whether their nomination papers were withdrawn before or after the scrutiny or were rejected as a result of the scrutiny. On the same ground the petitioner's claim for the seat was held inadmissible in Ambala and Simla (Mohammadan) Constituency case 1937 reported at page 6 of the same book, though the nominated candidate had subsequently withdrawn.

18. It may be noted that the claim for seat was interlinked with the necessity of joining all nominated candidates as respondents irrespective of the withdrawal of candidature in the laws of various provinces. These laws do not seem to be absurd or devoid of reason. The author of the "Law of Elections and Election Petitions" (Nanakchand Pandit) opines that the reasons for imposing this duty is that each of the other candidates may have the opportunity to raise recriminations to show that the petitioner is not entitled to this declaration which he claims. Undoubtedly this object has been achieved under section 90(1) of the Act under which any candidate can come in and be joined as respondent within fourteen days of the publication of the petition in the official gazette. But this section requires a candidate to take some steps to be joined as a respondent within prescribed time while section 82 purports to give him the right unsought and unsolicited. This privilege implies special consideration to candidates who entered the arena for election at the first stage and ran the gauntlet of scrutiny successfully but eventually retired from the arena for reasons of their own. Though they did not go to the polls, the legislature seems to have thought that their status as duly nominated candidates should be recognised in the contest of election petitions which may lead to unthought of results or the transfer of seat from an elected candidate. They may join the conflict, if they so choose, after skulking in their tents but there

is no element of compulsion. In this view of the matter, there is no absurdity involved in the legal requirements of their joinder as respondents in an election petition. *Lex est dictamen legisis* the Maxim which should nomally be applicable. There is no reason to suppose that the aforesaid interpretation of section 82 proves an exception to this rule.

19. In fact section 82 of the Act has unified and rationalised the law prevailing before the Act about the impleading of respondents in election petitions. A petitioner has been saved the trouble of relating the joinder of parties to the reliefs claimed. It is therefore provided that all duly nominated candidates should be joined as respondents. What was perhaps contemplated to be a simplification of the matter has led to controversies of vast magnitude about the definition or meaning of a "duly nominated candidate". I have had the advantage of reading a copy of the order in election petition No. 316 of 1952 before the Election Tribunal at Allahabad (Shri Saligram Jaiswal v. Sheo Kumar Panday and others) in which it has been held that a candidate whose name does not appear in the list of valid nominations cannot be regarded as a duly nominated candidate. With utmost respect to this Tribunal I have not been able to accept this interpretation for the reasons already mentioned. One very much wishes that the expression "duly nominated candidate" used in section 82 of the Act was so defined or explained by the legislature as to be beyond the range of controversy.

20. My finding, therefore, is that duly nominated candidates who have withdrawn their candidature under section 37 of the Act should be joined as respondents in an election petition. But the majority view of my learned colleagues will prevail under section 104 of the Act and would be regarded as the view of the Tribunal. In the circumstances I do not feel called upon to express an opinion whether this Tribunal is competent to order or permit the joinder of such candidates as respondents *suo moto* or on the request of the petitioners concerned.

21. The question of the effect of non-joinder of such respondents does not arise for the practical purposes of these petitions in view of the opinion of the majority on this matter. It may however be said to arise as a sequel to my finding on the issue of non-joinder. But I feel it would be needless to express a definite opinion on this question at this stage of the proceedings. The question of power or jurisdiction of Tribunals to permit amendments in election petitions is likely to arise in some of these cases in future and it may be embarrassing to all concerned including myself, if I arrive at or express conclusions on this subject. Suffice it to say that in spite of the apparently mandatory language of section 82 the Act has not provided for the summary dismissal of election petitions on the ground of non-joinder of parties, as it has been provided for dismissal for non-compliance with the provisions of section 81, section 83 or section 117 of the Act.

22. The exclusion of non-compliance with the requirement of joinder of parties contained in section 82 from the category of disobedience of other mandatory provisions referred to above meriting dismissal of petition is significant. This exclusion seems to be based on sound reasons. On the other hand the inclusion of non-joinder of parties in this sternly imperative category would have wiped out the distinction between necessary party and proper party and would have imposed a uniform penalty regardless of the matter and consequence of non-compliance. In statutes sometimes an apparently mandatory provision is regarded as really directory.

(Sd.) G. L. SHRIVASTAVA, *Member*,
Election Tribunal Rewa, V.P.

Finding of the Tribunal

The unanimous view of the Tribunal is that the non-joinder of candidates whose nominations had been rejected at the time of scrutiny and of those who withdrew their candidature is not fatal to the maintenance of these petitions.

The view of one of the members of this Tribunal (Shri G. L. Shrivastava) as recorded above however is that a candidate whose nomination papers had been accepted at the time of scrutiny and who withdrew under section 37 of the Representation of the People Act, should have been joined as respondents to these petitions.

(Sd.) E. MUKARJI, *Chairman*.
(Sd.) G. L. SRIVASTAVA, *Member*.
(Sd.) U. S. PRASAD, *Member*.

The 26th November, 1952.

ANNEXURE B

IN THE COURT OF THE ELECTION TRIBUNAL, VINDHYA PRADESH AT REWA

Shri Udainath Singh—*Petitioner.*

Versus

Shri Jagat Bahadur Singh, etc.—*Respondents.*

PETITION No. 4/164.

ORDER

In this case the petitioner Shri Udainath Singh has questioned the validity of the election of respondent No. 1 to the Legislative Assembly of Vindhya Pradesh, which is a Part C State, from Chorhat Constituency mainly on the ground that the nomination paper of Raja Sheo Bahadur Singh respondent No. 2 was improperly accepted inasmuch as he was convicted for the offences under Section 161 and 120 (B) I.P.C. by the Judicial Commissioner, Rewa and sentenced to rigorous imprisonment for three years and to a fine of Rs. 2,000, on 10th March 1952 and was, therefore, disqualified for being chosen to the Legislative Assembly.

Respondent No. 1 in his written statement admits the conviction of Raja Shoe Bahadur Singh of the above charges, as also the sentence of imprisonment and fine passed on him by the Judicial Commissioner. Respondent No. 2 also in his written statement concedes that he was convicted on 10th March 1951 by the Judicial Commissioner's Court under Section 161 and 120(B) I.P.C. and sentenced as stated above. These respondents however contend that the mere fact of Raja Sheo Bahadur Singh's conviction would not debar him from offering himself as candidate for the election to the Legislative Assembly. These respondents further alleged that an appeal from the above judgment of the Judicial Commissioner has been preferred in the Supreme Court of India and is still pending.

On the above pleas Issue No. I has been raised to the following effect:—

> "Was respondent No. 1 Raja Sheo Bahadur Singh disqualified for being a candidate for the State Legislative Assembly of Vindhya Pradesh on the ground that he was convicted on the 10th of March 1951 under Section 161 and 120(B) I.P.C. and sentenced to 3 years R.I. and fined Rs. 2,000?"

It may be noted at the outset that the lawyer for the petitioner in his statement before us recorded on 24th October, 1952, stated that respondent No. 2 was not a sitting member of the Parliament or State Legislature on 10th March 1951. He further stated that the appeal against the conviction is still pending before Supreme Court of India. These facts are admitted by the counsel for Respondent No. 1.

So we have to find out as to whether respondent No. 2 Raja Sheo Bahadur was disqualified from being chosen or elected to the Legislative Assembly of this State and his nomination paper was wrongly accepted by the Returning Officer. The other two Issues Nos. II and III regarding the result of the election having been materially affected by the improper acceptance of the nomination paper of respondent No. 2 are to be considered later.

Section 7 of the R. P. Act 43 of 1951 has been made applicable to Part C State by virtue of section 8 of Government of Part C States Act 49 and 1951. Section 7 of the R. P. Act enumerates the disqualifications for membership of Parliament or of a State Legislature. The relevant portion of this Section reads thus:—

> "A person shall be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State 7(b). If whether before or after the commencement of the Constitution, he has been convicted by a Court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of 5 years, or such a less period that the Election Commission may allow in a particular case, has elapsed since his release".

As stated above respondent No. 1 was admittedly convicted under Section 161 and 120(B) I.P.C. by the Judicial Commissioner, Rewa, by judgment dated 10th March 1951 and sentenced to a term of three years R.I. and a fine of Rs. 2,000. The judgment of the Judicial Commissioner has also been filed in this case and placed on record. Hardly a year had elapsed between the date of his conviction and the

filing of the nomination paper of respondent No. 1. So obviously respondent No. 2 was disqualified for being chosen to the Legislative Assembly of Vindhya Pradesh. Since Raja Sheo Bahadur Singh respondent No. 2 was not a sitting member of the Parliament or of any State Legislature on the date of his conviction, namely 10th March 1951, he cannot take the advantage of the sentence embodied in Section 8 of the R.P. Act, 1951 by reason of his filing or preferring an appeal against the judgment of the Judicial Commissioner in the Supreme Court of India. The learned lawyer for respondent No. 1 also has conceded this point. He has, however, contended that the disqualification prescribed by Section 7(B) of the R. P. Act could operate against respondent No. 2 only if he had undergone any part of the sentence imposed upon him by the Judicial Commissioner Rewa. In this connection he has referred us to the wording of clause (b) of Section 7 *e.g.* "has been convicted by a Court in India of any offence and sentenced to transportation or imprisonment for not less than two years". According to the learned lawyer for respondent No. 1 'Sentenced' means 'Condemned' and so unless respondent No. 1 was sent to jail and served any portion of the sentence imposed upon him, he would not be disqualified under clause (b) of section 7 of the R. P. Act. There is nothing in clause (b) of Section 7 of R. P. Act to indicate that execution of the sentence is necessary to disqualify a convicted person to offer himself as a candidate for the election. So we find ourselves unable to accept this contention of the learned lawyer because we cannot read into the section what is not there.

The case of Brijraj Kishore Chandra Singh Deo *versus* Govind Pradhan reported at page 82 of the Indian Election Cases by Sen and Poddar cited by the learned lawyer for respondent No. 1 has, in our opinion, no application to the facts of the present case. In the above reported case the respondent had been sentenced to 2 years R.I. and his sentence was unconditionally suspended by the local Government under Section 401 Cr. P.C. only a few months after passing of the sentence and so it was held therein that respondent No. 1 was not disqualified for being chosen as a member of a Legislature. In the present case the conviction of respondent No. 2 still stands. It may be upheld or set aside or reduced by the Supreme Court later. In the above reported case the sentence which had been passed against the respondent of that case was suspended or remitted unconditionally by the Governor of Madras and so it had the effect of reducing the previous sentence of the Magistrate concerned to about seven months already undergone. By virtue of this remission of the sentence in the reported case the bar of disqualification under Section 69 of the old Act was removed and hence it was held that he could stand for the election. In the present case the order of the Judicial Commissioner convicting respondent No. 2 and sentencing him to three years R.I. and a fine of Rs. 2,000 has not yet been set aside. It holds good even now.

Next it has been urged by the learned lawyer for the respondents that since the appeal from the order of the Judicial Commissioner convicting respondent No. 2 is still pending before the Supreme Court of India the order has no finality and as such respondent No. 2 cannot be deemed to have been disqualified for being chosen to the Legislative Assembly of Vindhya Pradesh within the meaning of Section 7(B) of R. P. Act. Here also we do not subscribe to the view of the learned lawyers for the respondents. The intention of the legislature in cases of appeal from conviction is clear from the provisions of section 8 of the said Act. As provided in section 8 of the R.P. Act only a sitting member of a State Legislature cannot be disqualified for reason of his conviction and sentence of three years or more if he has preferred an appeal within three months of the date of his conviction till the final disposal of the appeal. The Act does not provide for removal of disqualification of a person who is not a sitting member even if he has preferred an appeal or petition for revision against his convicting and sentence. Section 7 of the R.P. Act imposing the disqualification on a person for being chosen to a State Assembly or House of People if he has been convicted by a competent court and sentenced to imprisonment for not less than two years admits of no exception or qualification in the case of person who is not a member of Legislative Assembly or other House of Parliament according to the wordings of this section read in the light of the savings (a) to (j) of Section 9 of R. P. Act, 1951.

While arriving at our conclusion we have not been oblivious of the fact that this interpretation of section 7 of the R. P. Act may possibly cause hardship to some persons who have preferred an appeal or revision which may result in their acquittal or reduction of the sentence. We have to interpret section 7 according to its plain language and meaning. According to the accepted rules of construction of Statutes if the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense even though it leads to manifest hardship. We feel that the Legislature was not forgetful about such cases of possible hardship

while enacting sections 7 and 8 of the R.P. Act (1951) as they stand. But it could not be helped. For the making of an exception in the case of a candidate for election as it has been made in the case of a sitting member would upset the arrangement for election and would lead to the holding of such elections in abeyance till the final decision of an appeal or revision in the case of convicted persons and thus a graver hardship would be entitled on the electorate for the sake of such cases. The Legislature therefore rightly intended that such cases should not stand in the way of nomination for elections or should not lead to re-election after a conviction or sentence has been quashed or modified.

Hence we find that Respondent No. 2 was disqualified for being nominated as a candidate for the election to the Legislative Assembly of Vindhya Pradesh and, therefore, his nomination paper was improperly accepted.

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(Sd.) E. MUKARJI, *Chairman.*
(Sd.) G. L. SRIVASTAVA, *Member.*
(Sd.) U. S. PRASAD, *Member.*

[No. 19/164/52-Elec. III.]

By Order
P. R. KRISHNAMURTHY, Asstt. Secy.

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